prisoner was informed that his infant daughter had been ravished, some weeks before, by his son-in-law. He went to the house of the ravisher and demanded an explanation. When the latter answered him defiantly, the father shot twice and killed him. Here was clear "cooling time," and no further provocation save the defiant reply, but it was finally held that all the facts should have gone to the jury on the general question of reasonable provocation.

The opinion of the court is clear and convincing; it is supported by a few strong modern cases, notably *Mayor* v. *People*, 10 Mich. 212, and *Reg.* v. *Rothwell*, 12 Cox C. C. 145. The authority against the decision practically reduces to a number of *dicta* which reiterate the formula, "mere words are not a provocation," and exemplify a legal habit of depending on unconsidered maxims; but the point seems to have been directly raised only in *Reg.* v. *Rothwell*, *supra*. Few will disagree with the result of the principal case. It is for just such a case that the arbitrary mechanical rule of the old law is obviously unfit. Here the mere words were but the "last straw," the crowning taunt; to treat them as a separate species of provocation and make a separate rule about them is irrational, — more, it is belittling the intelligence of the jury. And surely it is most important for the dignity of the law that, in regard to the most serious and notorious of crimes, its judgment should keep step with public opinion.

REVOCATION OF AGENCY BY DEATH OF THE PRINCIPAL. — By the civil law all acts of an agent performed within the scope of his authority before he has notice of the death of his principal are binding on the deceased's estate. But at the common law the opposite rule prevails, both in England and in America. And the cases hold that the death of the principal creates an instantaneous revocation of authority, unless the power of attorney be coupled with an interest. *Davis* v. *Windsor Savings Bank*, 46 Vt. 728; *The Farmers' Loan & Trust Co.*, 139 N. Y. 284.

Deweese v. *Muff*, reported in The Central Law Journal, Feb. 30, 1899, seems to attempt to fasten an exception on this general rule. The payee of a note indorsed it in blank, and gave it to his agent for collection. In ignorance of the subsequent death of the principal, the maker paid to the agent a balance due on the note. The representative of the payee repudiated this payment on the ground that the authority to collect had been revoked by death, and sought to recharge the maker. The Supreme Court of Nebraska sustained a peremptory instruction to return a verdict for the defendant. It reasoned correctly enough that, as the note was properly indorsed by the payee, it was not necessary for the agent to collect or receive money in his principal's name. The maker would clearly be protected after payment to any one who came within the tenor of the promise. But apart from the law of negotiable paper, the court added this further discussion. Although, it said, as a general rule the death of a principal instantly terminates the agency, still, where one in good faith deals with an agent in ignorance of the death of the principal, the representatives are bound if the act done is not required to be performed in the principal's name.

This *dictum* is interesting as showing an attempt to break away to a certain extent from the rigorous principle of the common law which unquestionably often works hardship. It may be reasoned that the general

rule must apply to foreign as well as to domestic agents, — and representatives abroad are often required to negotiate transactions of great importance without the possibility of knowing whether the death of their principal has revoked their authority; that accordingly the practical purposes of trade and commerce might, perhaps, be furthered by the more equitable rule of the civil law. But cannot it be said in answer to this argument that those who deal with an agent knowingly assume the risk that without notice his authority may be revoked by operation of law? And is not the accepted doctrine of the common law one of sound good sense, in perfect conformity with the law of agency? That system rests fundamentally on the theory that the agent is identified with the principal; that the act of the servant is the act of the master. Nothing surely can be the principal's act which is done after his death.

THE BENEFICIARY OF A CONTRACT NOT A CESTUI QUE TRUST. — In the case of *Moore* v. *Triplett*, Supreme Court of Appeals of Virginia, Virginia Law Register, Vol. IV., page 681, it appeared that a debtor transferred land to a purchaser in consideration, *inter alia*, that the purchaser promised to pay certain of his debts. The purchaser failed to perform his promise. It was held that, apart from the personal liability on the contract, the land conveyed was subjected to a trust for the debts, and that the trust might be enforced against a grantee who took the land from the purchaser without giving any consideration. The decision seems clearly wrong. The purchaser entered into a contract to pay debts. He intended a liability to the person he contracted with, — to no other. The performance of his side of the contract would benefit the original creditor, but that is no reason for giving the creditor a hold on the contract. The case goes much further than to allow a beneficiary to sue on a contract to which he is not a party; it declares the purchaser a trustee of the consideration he received, and makes the beneficiary a *cestui*. But the purchaser had no idea of placing himself under a liability to the beneficiary, no idea that he was putting himself into the jaws of equity at all. The court held that because he assumed a legal liability he should be held to an equitable one as well, so laying a burden upon him without reference to any demand of conscience or to any misconduct. The practical result of this decision was that the third party beneficiary of the contract got a lien on the assets of the purchaser which no creditor of the purchaser could get. Yet the position of that beneficiary in the transaction was that of a mere volunteer, for whom equity should take no step.

The decision of the principal case is not law in any other jurisdiction, and rests on no authority. The fundamental distinction which the court disregard, and the importance of it, are perhaps most aptly illustrated by certain partnership cases. If the joint property in a partnership is assigned, at dissolution, to one of the partners upon trust to pay the firm debts, it must be appropriated for that purpose. See Ames, Cases on Partnership, p. 218, note. If, however, the property is assigned to him in consideration of his promise to pay the firm debts, and the whole transaction is in good faith, it has been held, *Howe* v. *Lawrence*, 9 Cush. 553, that the property has become the separate estate of the single partner, and liable for his individual debts.